IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1974
No. _____

MARILYN LOUISE CASEY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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Petitioner,MARILYN LOUISE CASEY, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeal for the Ninth Circuit entered August 12,1974,affirm-

ing her conviction under 21 U.S.C.Section 841 (a) (2),and that on hearing the judgment of conviction be reversed.

OPINIONS BELOW

The Opinion of the Court of Appeals is not published and a copy thereof is included in the Appendix. There were no written opinions by the District Court

JURISDICTION

A timely motion to suppress the evidence was made by petitioner and overruled by the District Court; The judgment of conviction was affirmed by the Court of Appeal on August 12,1974. Timely motion for rehearing was denied on September 9,1974. This Court has jurisdiction under 28 U.S.C.A.Section 1254 (1). The question presented here was raised in both the District and

Appellate Courts below.

QUESTION PRESENTED

Whether there was probable cause for the arrest leading to the search that produced the evidence on which the conviction rests.

CONSTITUTIONAL PROVISIONS INVOLVED

"The right of the people to be secured in their persons,houses,papers,and effects,against unreasonable searches and seizures,shall not be violated,and no warrants shall issue,but upon probable cause,supported by Oath or affirmation,and particularly describing the place to be searched,and the

persons or things to be seized."

FOURTH AMENDMENT, CONSTITUTION UNITED STATES OF AMERICA.

STATEMENT OF CASE

On June 13,1973, the Petitioner was arrested without a warrant and searched after she was taken from aboard a Greyhound Bus in Calexico, California. The order for arrest was made by telephone from Agent Washington who was agent in charge of the Customs service in San Luis, Arizona.

At the time that Agent Washington ordered the arrest his decision was based on two reports from informers and a brief 10 minute surveillance of the defendant. The first report came from unknown sources in Alaska and indicated

that a Moses Casey was engaged in narcotics traffic and would travel to the Yuma area to purchase narcotics. It also contained a description of his car. The report did not indicate when Casey would come to Yuma,where he would stay or anything about a specific narcotics transaction. The report did not mention anything at all about the petitioner.

Agent Washington knew from his only previous contact with the rumored operation from Alaska that a man named Smith had come to the Yuma area a year and one-half before,had stayed two days, and had left the area without purchasing narcotics.

On June 13,1974,an informer in Yuma indicated that Moses Casey was in Yuma to purchase narcotics and indica-

ted where Casey was staying. The informer did not indicate how he received his information about the Casey's;nor did he indicate that a drug transaction had occurred or was about to occur.

Immediately the officers set up a surveillance of the motel. This surveillance did not reveal any contact between the Casey's and anyone else. Within ten minutes the Petitioner left the motel and caught a Greyhound Bus to her home. Shortly,thereafter,Moses Casey and his brother left and were stopped and searched with negative results. Thereupon,Agent Washington ordered that petitioner be arrested and searched. Agent Washington did not have any specific information from his agents or informers that a narcotics transaction had taken place.

REASONS FOR GRANTING WRIT

In the Appellant brief of the U. S.Attorney,it was contended that the search could be justified on either a "probable cause" or a "founded suspicion" doctrine. The Writ should be granted to review the standard of probable cause established by the Ninth Circuit in this case. The Court of Appeal based its decision on DRAPER v. UNITED STATES,358 U.S.307 and FONG v. UNITED STATES,422 F 2d 1024,9 Cir.1970. Petitioner contends these cases are distinguishable from the case at bar. Both DRAPER and FONG invclved specific information about a specific narcotics transaction. Moreover,there was ccrroboration by surveillance. In the case at bar,there was neither specific infor-

mation from reliable informers about a specific transaction nor did the surveillance corroborate that the petitioner had either the time or opportunity to engage in such a transaction. It is well established that "common rumor,or report,suspicion,or even strong reason to suspect" are not sufficient to constitute probable cause.

HENRY v.UNITED STATES,361 U.S.98,101,1969

FINALLY,there is a conflict in the Circuit Courts on how to treat the issue of probable cause. The Eighth Circuit in UNITED STATES v.MITCHELL, 425 F 2d 1353 is following a stricter standard of probable cause than is the Ninth Circuit as reflected in Petitioner's case. In effect,the Ninth Circuit

based on the facts in this case has moved away from a probable cause standard to a doctrine of "founded suspicion".

Respectfully Submitted,

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A P P E N D I X

ORDER AFFIRMING

No. 74-1784

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appelee,

vs.

MARILYN LOUISE CASEY,

Defendant-Appellant.

Motion for reconsideration of revocation of bail and petition for rehearing

DENIED.

U.S.COURT OF APPEALS
F I L E D
Sep 9 1974

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. MARILYN LOUISE CASEY, *Defendant-Appellant.*	No. 74-1784 ORDER AFFIRMING

[August 12, 1974]

Appeal from the United States District Court
for the Southern District of California

Before: CHAMBERS and GOODWIN, Circuit Judges, and COPPLE,* District Judge.

The judgment of conviction is affirmed.

We believe under Fong v. United States, 422 F.2d 1024, 9 Cir. 1970, and Draper v. United States, 358 U.S. 307, the conviction is on solid ground.

Bail is revoked effective now.

*The Honorable William P. Copple, United States District Judge for the District of Arizona, sitting by designation.

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DOCKETED

FILED
SEP 9 1974
, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	No. 74-1784
	)	
vs.	)	
	)	ORDER
MARILYN LOUISE CASEY,	)	
	)	
Defendant-Appellant.	)	
	)	

Before: CHAMBERS and GOODWIN, Circuit Judges, and COPPLE, District Judge.

The motion for reconsideration of revocation of bail and the petition for rehearing are denied.

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-388

MARILYN LOUISE CASEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a bench trial in the United States District Court for the Southern District of California, petitioner was convicted on two counts charging possession of 515 grams of heroin and 24 grams of cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1). Petitioner was sentenced to the maximum period authorized by law and for a study as described in 18 U.S.C. 4208(c), with the sentence subject to modification pursuant to 18 U.S.C. 4208(b). The court of appeals affirmed (Pet. App. ii). Petitioner here contends that her warrantless arrest and the search of her purse made incident to that arrest violated the Fourth Amendment.

The evidence, which is not in dispute, showed that in January 1972 Customs Agent Henry H. Washington, stationed in San Luis, Arizona, received information that Moses Casey was operating a large narcotics business in Anchorage, Alaska that involved the use of both male and female couriers to obtain drugs in Yuma, Arizona, and to transport them either to Anchorage or to Detroit, Michigan

(Tr. 37-38).[1] In ensuing months, Washington was advised by a narcotics agent in Anchorage that Casey kept a Cadillac automobile in Fontana, California, and that Casey would come to Yuma personally to make a narcotics purchase but would transport the narcotics via couriers (Tr. 38). Another San Luis customs agent, John Wilson, was given a description of the Cadillac and the number of its Alaska license plate. He forwarded this information to local narcotics agents in Yuma (Tr. 3-4).

On June 13, 1973, a reliable confidential informant notified Wilson that a white female and a black male had come to Yuma to purchase narcotics, were registered in Room 433 of the Stardust Motel in Yuma, and had been using the Cadillac previously identified as belonging to Moses Casey. A surveillance of the motel was commenced at 3:10 p.m. by federal and local agents. Petitioner (a white female), and Moses Casey and Casey's brother Louis (black males), were observed leaving from Room 433 (Tr. 16-17). Petitioner left the motel in a taxicab (Tr. 11). Moses and Louis Casey went to the Cadillac, which they drove to the front of the motel. There, Moses Casey left the car to pay the bill for Room 433. He then returned to the vehicle and drove off toward California. The car was searched at a California inspection station, but no narcotics were discovered (Tr. 11). At the inspection station a local narcotics agent, Richard Stallworth, asked the brothers about the woman who had been with them in Yuma. Initially, Louis denied being with a woman in Yuma and Moses remained silent. However, after further interrogation they both admitted that a woman had been with them, but they claimed that they did know where she had gone (*ibid.*).

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[1] "Tr." refers to the transcript of the hearing on the motion to suppress, a copy of which is being lodged with the Clerk of this Court.

Further investigation by Agents Washington and Stallworth disclosed that petitioner had flown to Yuma on the previous day and that she had rented an automobile at the airport, giving the rental agency two addresses, one in Fontana, California, and another in Anchorage, Alaska (Tr. 12, 39-40). Although hired for but one day, the rental vehicle had 336 additional miles on the speedometer when returned (Tr. 20). The agents also learned that, on leaving the motel, petitioner had taken a taxicab to a bus depot and had purchased a ticket for a trip to San Bernadino, California (Tr. 19-20). Agent Washington notified Customs Agent John D. Fernandez in Calexico, California, of petitioner's physical description and advised Fernandez that petitioner, whom he believed to be carrying narcotics, should be investigated when the bus arrived there. Fernandez and Agent John Pulley proceeded to the bus stop, where they met the bus and removed petitioner from it. Pulley advised petitioner of her constitutional rights. Fernandez asked petitioner what she had in her purse. Petitioner replied that she had a package. Asked if it contained heroin, petitioner replied "Yes" (Tr. 24-25). Fernandez then examined the purse and removed the package (Tr. 25).

There is no merit to petitioner's claim that probable cause for her arrest and the accompanying search of her purse was lacking. Prior to confronting her, several law enforcement agents had acquired a substantial amount of information regarding the routine employed by Moses Casey to obtain narcotics in the Yuma area. They knew that he used "mules" (Tr. 42) who, after the narcotics were obtained, would take possession of the drugs and travel with them, apart from Casey, to the intended destination. The agents' knowledge that Moses Casey had come to Yuma in search of narcotics and was staying with petitioner, coupled with

their observation that petitioner traveled separately to California while Moses Casey and his brother drove back without narcotics, afforded them ample cause to believe that petitioner was serving as Moses Casey's courier. This belief was reinforced by the equivocal responses given by Louis Casey regarding petitioner's presence with them at the motel. The agents who actually arrested petitioner were not required to know all of the underlying facts that constituted probable cause, since they were acting as part of a joint law enforcement enterprise. See *United States* v. *Robinson,* 457 F.2d 1304 (C.A. 5), certiorari denied, 409 U.S. 863; *United States* v. *McKenzie,* 446 F.2d 949 (C.A. 6). When Agents Fernandez and Pulley located petitioner on the bus, they lawfully arrested her. The search of her purse was incident to that lawful arrest. *Draper* v. *United States,* 358 U.S. 307.

Moreover, petitioner's purse was not searched until after she had been warned of her rights and had admitted that the purse contained a package of drugs. Her voluntary admission provided ample probable cause for the subsequent search and seizure. *United States* v. *Cox,* 459 F.2d 986 (C.A. 5).[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.

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[2]Petitioner incorrectly suggests (Pet. 8-9) that the decision of the court of appeals in the instant case conflicts with *United States* v. *Mitchell,* 425 F. 2d 1343 (C.A. 8), certiorari denied, 400 U.S. 853. The court of appeals in *Mitchell* also reversed a district court's suppression order. Nothing in *Mitchell* supports petitioner's contention that the courts of appeals differ in applying the standard of probable cause.